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CITY OF BUCKLEY
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May 15, 2006

David C. Peeler, Water Quality Program Manager
The State of Washington Department of Ecology
P O Box 47600
Olympia, WA 98504-7600



Re: Comments on Proposed NPDES II Rule

Dear Mr. Peeler:

On behalf of the City of Buckley, Pierce County, I am writing to request changes to the proposed NPDES Phase II rule being promulgated by your agency. The City's concerns are as follows:

1. MEP vs AKART. The City requests that compliance with the new rule be according to the Maximum Extent Practicable ("MEP") standard rather than the proposed "All Known Available Reasonable Treatment" ("AKART") standard. The proposed standard appears to be more strenuous than that required by the federal law, and imposes a regulation upon the City that it might well be unable to meet. MEP implies that the City's very real budget limitations may be considered in measuring compliance; AKART does not appear to allow that consideration.

2. Discharge into the Ground. The City requests modification of the rule to segregate issues of discharge of pollutants into the ground to a separate rule. Discharges into the ground are not covered by the NPDES (unless perhaps a clear hydrological link to the waters of the United States is demonstrated.) Adding discharge into the ground is problematical because the NPDES II program is intended to implement federal law, which carries significant penalties for violation. By mixing issues of discharges into the waterways of the United States with issues of discharge to the ground, the proposed rule poses a concern as to whether federal remedies would be applied to possible ground discharges. The federal remedies include exposure to third-party lawsuits and awards of costs and fees, which any City should, and does, fear. The decision to shift the costs of lawsuit to a third-party plaintiff is a significant policy decision that is beyond the scope of DOE authority, and which is properly left to the legislature.

3. Measurement of Public Education. The DOE's proposed requirements for public education require measurement of changes in public understanding of discharge issues. The cost of such a measurement would likely outweigh its value, and the cost of measuring the effectiveness of changing attitudes in a small town would be better spent on the basic purposes of the NPDES, namely regulating storm water discharge, and detecting, and eliminating polluting discharges.

4. Agricultural Discharges. To the extent that agricultural discharge is not regulated under the Clean Water Act, it should not be required of cities in the proposed rule. That part of the rule would affect small farms within the City limits. As in the case of discharges to the ground, the DOE rule would appear to expand the scope of the Clean Water Act, and would appear to expose the City to Clean Water remedies that do not pertain under federal law. The policy decision to transfer the costs of litigation for alleged violation through agricultural discharges is beyond the scope of DOE authority, and is properly left to the legislature.

5. Flushing Lines. The federal law would allow cities to decide whether flushing lines would be a significant discharge requiring regulation; the DOE rule would require such regulation. The judgment should be left to the local jurisdiction. Again, whenever the DOE rule exceeds the scope of the Clean Water Act, incorporating the issue into the NPDES permit appears to expose the City to Clean Water remedies, which is beyond DOE's authority, and is a policy decision for the legislature.

Respectfully submitted,

SUSAN RAE SAMPSON, INC., P.S.



Susan Rae Sampson, City Attorney

SRS:mmk

cc: Mayor Patricia Johnson
City Administrator Dave Schmidt